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# Discretionary Justice: A Preliminary Inquiry, by Kenneth Culp Davis

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## BOOK REVIEWS

DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY. By Kenneth Culp Davis. Baton Rouge, Louisiana: Louisiana State University Press. 1969. Pp. xii, 233. \$8.50.

The words "preliminary inquiry" suggest a pioneering work, promising fresh approaches to perennial problems. Maximum expectations are generated when the author of the inquiry is Kenneth Culp Davis, whose pullulating brain has propagated progeny prodigiously throughout the literature of administrative law. Professor Davis has indicated in his earlier writings that he has no time for the elucidation of the obvious,<sup>1</sup> and with his deep understanding of administrative law, jurisprudence, and the behavioral sciences, the reader can justifiably expect no less than a ground-breaking essay.<sup>2</sup>

With his varied background affording him an enviable vantage point, Professor Davis has obtained a panoramic view of the legal system which enables him to conclude correctly that the great majority of research on the exercise of discretion is nothing more than drivel which rehashes the ideas of earlier thinkers while avoiding the difficult issues that cry out for clarification.<sup>3</sup> This perceptive observation suggests a broad approach to discretionary justice similar to that taken by general systems theorists such as Ludwig von

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<sup>1</sup> "Financial support is, in my opinion, unnecessary to make the discovery that behavioral science has so far made contributions to administrative law which add up to exactly zero." Davis, *Behavioral Science and Administrative Law*, 17 J. LEGAL ED. 137, 137-38 (1964). See also note 3 *infra*.

<sup>2</sup> It is thus no surprise that *Discretionary Justice* has already been acclaimed as a significant and creative work. See Schulz, Jr., Book Review, 21 AD. L. REV. 411 (1969).

<sup>3</sup> K. DAVIS, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY vi-vii (1969). A building analogy is one of Davis' favorites. In his scathing attack on a piece by Grundstein [*Administrative Law and the Behavioral and Management Sciences*, 17 J. LEGAL ED. 121 (1964)] he writes:

The amazing fundamental of the Grundstein presentation is that he never even attempts to show that any single tool he talks about will be useful in constructing a building. The end product is neither a building nor a tool, but it is no more than a lot of talk about the possibility of thinking about tools and some excitement about tools that he says have been useful for building entirely different kinds of buildings. Davis, *supra* note 1, at 148.

It is interesting to note that Davis did find that "Lindblom's thinking [citing Lindblom, *The Science of "Muddling Through,"* 19 PUB. AD. REV. 79 (1959)] may well be on a track that will lead somewhere if he stays on it," *id.* at 147, but failed himself to follow up on Lindblom's later elaboration of his ideas. See D. BRAYBROOKE & C. LINDBLOM, A STRATEGY OF DECISION: POLICY EVALUATION AS A SOCIAL PROCESS 81-111 (1963). The strategy of disjointed incrementalism might have been a useful conceptual tool for Davis. See *id.* at 170. See, e.g., K. DAVIS, *supra* note 3, at 20-26.

Bertalanffy<sup>4</sup> — an approach quite appropriate for analysis of complex decision-making processes.<sup>5</sup> Professor Davis, however, does not follow such a path: indeed, he curiously avoids discussion of policy formulation, social justice, judicial discretion, and juror discretion — all matters inherent in a general systems approach.<sup>6</sup> He opens instead with a quotation from William Pitt: "Where law ends, tyranny begins."<sup>7</sup> This cleverly begs the question because where law ends, discretion begins, and discretion may be exercised justly.

There are of course difficult definitional problems posed by an inquiry dealing with justice and discretion. In both instances a concept is involved which "is not a crystal, transparent and unchanged, [but] . . . the skin of a living thought [which] . . . may vary greatly in color and content according to the circumstances and the time in

<sup>4</sup> See L. VON BERTALANFFY, *ROBOTS, MEN AND MINDS* (1967).

<sup>5</sup> Modern systems theory might have provided a helpful perspective function for Professor Davis. It offers a useful scheme for resolving the locus problem [see A. KAPLAN, *THE CONDUCT OF INQUIRY* 78-80 (1964)], as well as for synthesis generally [see Rapoport, *General Systems Theory*, 15 *INT'L ENCYCLOPEDIA OF THE SOCIAL SCIENCES* 452 (1968); W. BUCKLEY, *SOCIOLOGY AND MODERN SYSTEMS THEORY* (1967)] by offering a "more flexible theoretical structure" [D. EASTON, *A SYSTEMS ANALYSIS OF POLITICAL LIFE* 21 (1965)] than other existing models. The theory can claim at least the following virtues: (1) It meets the criticisms aimed at much of contemporary behavioral science theory for failing to deal adequately with morphogenesis, deviance, and conflict, as well as morphosis, conformity, and cooperation. Most of the objections directed at functionalism and the equilibrium and organic models are met by the systems model. (2) The systems model deals with wholes, organization, teleology, goal seeking, and directiveness. (3) Focusing on systems and processes results in a broader perspective that encompasses more aspects of complex phenomena. This in turn enhances the facility for analysis of multivariate and polycentric problems. (4) The systems perspective may provide a *gestalt* or veritable periodic table for theory construction and thus aid immeasurably in integrating many areas of study and in exposing theoretical lacunae. See generally C. CHURCHMAN, *THE SYSTEMS APPROACH* (1968). For a critical analysis, see R. BOGUSLAW, *THE NEW UTOPIANS: A STUDY OF SYSTEM DESIGN AND SOCIAL CHANGE* (1965). There are certain passages in *Discretionary Justice* where a systems approach as envisioned by C. West Churchman would seem especially relevant. For illustrative examples, see K. DAVIS, *supra* note 3, at 100-02, 104-05, 158-59, 232.

<sup>6</sup> K. DAVIS, *supra* note 3, at 6. The omission of a consideration of social justice is especially interesting in light of Professor Davis' earlier observation that:

[A]dministrative law research deals with the problems of practitioners and with the problems of the government and that neither set of problems is subordinated to the other. Some administrative law research emphasizes fairness to private parties; other administrative law research emphasizes governmental effectiveness; the best administrative law research emphasizes the problem of accommodating the needs of fairness to the needs of effectiveness. Davis, *supra* note 1, at 153.

<sup>7</sup> K. DAVIS, *supra* note 3, at 3. The quotation is from the famous speech made by the Earl of Pitt on January 9, 1770, in the House of Lords. In the same speech Pitt observed that "[u]nlimited power is apt to corrupt the minds of those who possess it." A century later, Lord Acton in a letter to Bishop Creighton (1887) restated the idea more strongly: "Power tends to corrupt; absolute power corrupts absolutely."

which it is used.”<sup>8</sup> In dealing with such concepts we are in a posture similar to that of the six Hindu blind men who, after “seeing” an elephant for the first time gave six different reports as to its nature — it was like a wall, a snake, a spear, a tree, a fan, and a rope.<sup>9</sup> So too the nature of our view of discretion and justice depends on our perspective<sup>10</sup> and the context within which contact is attempted. Discretion is not a thing, and short of reification, it makes sense to speak of discretion only relative to situations where the decision maker is acting under constraints in choosing among the alternative courses of action open to him.<sup>11</sup> Driving home his point concerning the dearth of creative research, Professor Davis defines discretion in these terms: “A public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction.”<sup>12</sup>

Although lamentably absent from the compendious mass of material presented in *Discretionary Justice*, alternative definitions are possible.<sup>13</sup> Frequently discretion refers to a situation where “the

<sup>8</sup> *Towne v. Eisner*, 245 U.S. 418, 425 (1918) (Holmes, J.).

<sup>9</sup> See Cohen, *Field Theory and Judicial Logic*, 59 YALE L.J. 238, 266 (1950). The difficulties inherent in defining “law” have often been noted. “We speak of practicing law, as teaching it, as deciding it; and not one of us can say what law means.” B. CARDOZO, *Jurisprudence*, in SELECTED WRITINGS 7, 43 (M. Hall ed. 1947). “Those of us who have learned humility have given over the attempt to define law.” Radin, *A Restatement of Hohfeld*, 51 HARV. L. REV. 1141, 1145 (1938). “Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question ‘what is law?’ ” H.L.A. HART, *THE CONCEPT OF LAW* 1 (1961). For a survey of significant definitions, see P. DIESING, *REASON IN SOCIETY* 127-28 (1962); H. CAIRNS, *LEGAL PHILOSOPHY FROM PLATO TO HEGEL* 556 (1949).

<sup>10</sup> Alfred Korzybski suggests that the phenomenon called the “color” red would be defined quite differently depending on the perspective of the viewer.

A reactionary would call it a ‘Bolshevik’ . . . a Bolshevik would say ‘My color’ . . . a color-blind person would say ‘such a thing does not exist’ . . . a Daltonist would say ‘that is green’ . . . a metaphysician would say ‘that is the soul of whiskey’ . . . an historian would say ‘that is the color of the ink with which human history has been written’ . . . an uneducated person would say ‘that is the color of blood’ . . . the modern scientist would say ‘it is the light of such and such wave length’ . . .” A. KORZYBSKI, *MANHOOD OF HUMANITY* 51 (1921).

<sup>11</sup> Decision making is often defined in terms almost synonymous with Davis’ idea of discretion: “[D]ecision making is that thinking which results in the choice among alternative courses of action . . .” Taylor, *Decision Making and Problem Solving*, in *HANDBOOK OF ORGANIZATIONS* 48 (J. March ed. 1965).

<sup>12</sup> K. DAVIS, *supra* note 3, at 4.

<sup>13</sup> This naturally implies that definitions are not true or false, rather useful or useless. The difficulty confronting the verbal realist who seeks the true definition of justice or discretion is apparent. How does one discover the essence of justice? See text accompanying note 19 *infra*. The approach of conceptual pragmatism appears more appropriate. See I. HILL, *CONTEMPORARY THEORIES OF KNOWLEDGE* 295-96 (1961); H. KANTOROWICZ, *THE DEFINITION OF LAW* 5, 90 n.8 (A. Campbell ed. 1958);

standards an official must apply cannot be applied mechanically but demand the use of judgment."<sup>14</sup> In this sense, discretion exists no matter how precisely the standard is stated since it is always subject to administrative interpretation.<sup>15</sup> Discretion may also refer to situations where an official or institution like the Supreme Court, is not subject to review.<sup>16</sup> Or the term may refer to situations where an official is authorized to act in accordance with his own judgment without regard to an official standard.<sup>17</sup> Dean Pound defines discretion as "[a]n authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience. It is an ideal of morals belonging to the twilight zone between law and morals."<sup>18</sup> Esoteric mumblings such as the above only serve to emphasize the incisive simplicity of Professor Davis' encapsulation of discretion's very essence.

Thus having exhausted the subject of discretion, the text turns to the even more imposing task of identifying justice. And what a perplexing problem that is!

If justice is the product of a system of rules, then a computer might replace fallible hairless biped judges that blush, empathize, and engage in various similar "subjective" activities. . . . It is possible that "justice" subsumes a complex of ineffable ideas and interrelationships incapable of expression in linear form, such that just as the contrapuntal harmony of a Bach fugue can never be rendered on a solo bassoon, justice cannot issue full-grown in computer output.<sup>19</sup>

Refusing to chance unnecessary entanglement in this esoteric morass, Professor Davis informs the reader that "this essay is concerned primarily with a portion of justice — with that portion . . . of justice which pertains to individual parties."<sup>20</sup> This circumspect formulation accurately foreshadows the remainder of the text wherein the

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Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 835-36 (1935).

<sup>14</sup> Dworkin, *The Model of Rules*, 35 U. CHI. L. REV. 14, 32 (1967).

<sup>15</sup> See J. ROUCEK, *SOCIAL CONTROL* 87-88 (1947).

<sup>16</sup> In many ways all decision makers are subject to review, although not of a formal or official type. Judges are subject to professional criticism that is virtually institutionalized. That administrators are not subject to a similar form of critical review was one reason that Dean Pound was so concerned with "administrative absolutism." See Pound, *Administrative Agencies and the Law*, 2 WOMEN LAWYERS J. 6 (1945).

<sup>17</sup> See Dworkin, *supra* note 14, at 33-35.

<sup>18</sup> R. POUND, *CRIMINAL JUSTICE IN AMERICA* 926 (1930).

<sup>19</sup> Lewis, *The High Court: Final . . . But Fallible*, 19 CASE W. RES. L. REV. 528, 549-50 (1968).

<sup>20</sup> K. DAVIS, *supra* note 3, at 5-6.

reader is apprised of how "to find the optimum degree [of discretion and justice] in each set of circumstances."<sup>21</sup> We are first made privy to the fact that today there is too much discretion exercised by administrators. Some is necessary, but in many instances the existing discretion should be governed or guided by rules. Davis astutely observes that this optimum degree of constraint can be achieved by appropriately confining,<sup>22</sup> structuring, and checking discretion.

Although the legislature cannot always draft a statute that will confine by providing a complete guide to action,<sup>23</sup> legislatures "are almost always flagrantly deficient in failing to correct the administrative assumption of discretionary power which is illegal or of doubtful legality. Perhaps the greatest single area of discretionary power which legislative bodies should cut back is the power of the police to nullify legislation through non-enforcement or partial enforcement . . . ."<sup>24</sup> Thus, since the legislatures are deficient in meeting the problem, Professor Davis advises us that the appropriate confining and structuring of discretion will occur only when admin-

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<sup>21</sup> *Id.* at 4. Of course, Julius Stone's astute observation concerning confining of administrative discretion is apropos:

[I]t is easy to demand the *maximum possible* of "definiteness" and "neutrality" of "principles." The real question lies in what *is* possible. Even in the judicial exegesis of *legal* precepts we saw these limits to be severe. They must obviously be more so when administrative tribunals are asked to capture, in verbal formulations viable from case to case in a rapidly changing situation, the adjustments between all the potentially conflicting policies which must be simultaneously pursued. J. STONE, *SOCIAL DIMENSIONS OF LAW AND JUSTICE* 721 (1966).

<sup>22</sup> "By confining is meant fixing the boundaries and keeping discretion within them." K. DAVIS, *supra* note 3, at 55.

<sup>23</sup> This follows when we consider the reasons why administrative agencies are chosen for effectuating governmental policy: (1) The required action may be too complex, or may require too much factual investigation, for effective legislative action; (2) the action presents conflicting interests, either between individuals or between an individual and the government, which the summary methods of the executive process cannot appropriately resolve; and (3) in addition to the conflict of interest, there is something which makes a purely judicial resolution of the conflict unsatisfactory. See Gardner, *The Administrative Process*, in *LEGAL INSTITUTIONS TODAY AND TOMORROW* (M. Paulsen ed. 1959). See W. GELLHORN & C. BYSE, *Reasons for Establishment of Administrative Agencies*, in *ADMINISTRATIVE LAW* 1-7 (1960). Sometimes it is true that poor draftsmanship creates a situation where unnecessary discretion is exercised. See Wechsler, *The Challenge of a Model Penal Code*, 65 HARV. L. REV. 1097, 1113 (1952).

<sup>24</sup> K. DAVIS, *supra* note 3, at 55. Others have disagreed: "With limited exceptions, the attention of the legislature should be directed essentially to the need, through further legislation, for altering the policy standards, procedural machinery or budgetary allotment. In administering the act, the agency is to be free from legislative 'interference.'" Levy, *Congressional Oversight of Administrative Agencies*, 36 A.B.A.J. 236 (1950). See also Jones, "Oversight" Function of Congressional Standing Committees, 34 A.B.A.J. 1018 (1948).

istrators resort more frequently to the use of their rule-making power.<sup>25</sup> However, this does not mean that administrative rules must arise from adjudicated cases or be expounded as totally abstract general rules. Administrators may state a rule "in the form of (1) a hypothetical set of facts, (2) a statement of the problem raised by the facts, (3) an indication of the agency's answer to the problem, and, when appropriate, (4) a statement of the agency's reasons for its position."<sup>26</sup> Also, whenever administrators fail to propound appropriate rules by any of the above available methods, the courts can provide the needed incentive by establishing a judicial requirement that "administrators having power that is unguided by meaningful statutory standards must within a reasonable time issue meaningful rules which will properly confine their discretionary power in individual cases."<sup>27</sup>

These unique — and frankly intriguing — suggestions are buttressed by the observation that the structuring of administrative discretion is best accomplished by use of seven instruments: Plans, policy statements, rules, findings, reasons, precedents that are all open, and fair informal procedure.<sup>28</sup> "Openness is a natural enemy of arbitrariness, a natural ally in the fight against injustice."<sup>29</sup> Fairness in informal procedure is perhaps "fifty or a hundred times as important as fairness of formal procedure both in number of parties and amount involved."<sup>30</sup> Only the wise men of Gotham would find fault with these suggestions.

The subject of checking discretion is succinctly summarized by Professor Davis as follows:

Checking discretion. American government is stronger in checking discretion than in confining or structuring it. An outstanding need is for establishing a system of supervising decisions

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<sup>25</sup> See K. DAVIS, *supra* note 3, at 56-57. One author has characterized the inadequacies of the democratic institutions in the following terms:

That area where functional limitations make it impossible for the legislature to give precise guidance for administrative action, and where similar limitations prevent effective legislative and judicial oversight, represents the hard core of the challenge which administrative power presents to the democratic institutions. . . . Insofar as external controls on administration are here impracticable, we must obviously depend on *administrative self-control*. J. STONE, *supra* note 21, at 701.

<sup>26</sup> K. DAVIS, *supra* note 3, at 61.

<sup>27</sup> *Id.* at 221.

<sup>28</sup> *Id.* at 98.

<sup>29</sup> *Id.* at 226.

<sup>30</sup> *Id.* at 228.

of local prosecutors, perhaps in each instance by a state attorney general.

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The American assumption that prosecutors' discretion should not be judicially reviewable developed when executive functions were generally unreviewable. The assumption is in need of reexamination in the light of the twentieth-century discovery that courts can review executive action to protect against abuses while at the same time avoiding judicial assumption of the executive power. The reasons for judicial review of prosecutors' discretion are stronger than for such review of much administrative discretion that is customarily reviewable. The whole problem of possible judicial review of prosecutors' discretion is in need of a full study.<sup>31</sup>

At the national level, the author conceptualizes a new federal tribunal providing for inexpensive review of administrative action. By eliminating needless barriers to this forum, such as standing, ripeness, etc., he foresees the expansion of both administrative and judicial review beyond their present narrow confines.<sup>32</sup>

The reader will find *Discretionary Justice* a veritable storehouse of new ideas and approaches, documented by concrete examples of egregious abuse of discretion by federal and state agencies. The best evaluation of the work is offered by Professor Davis himself:

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<sup>31</sup> *Id.* at 228-29. It has long been noted that police and prosecutors exercise discretion. A variety of reasons are offered: (1) There are budgetary limitations that lead to selective enforcement of the law. The courts have recognized this as a valid basis for exercise of discretion:

[T]he [police] commissioner is bound to use the discretion with which he is clothed. He is charged not alone with the execution of the liquor laws of the State within the City of Detroit, but is likewise charged with the suppression of all crime and the conservation of the peace. To enable him to perform the duties imposed upon him by law, he is supplied with certain limited means. It is entirely obvious that he must exercise a sound discretion as to how those means shall be applied for the good of the community.

*Gowan v. Smith*, 157 Mich. 443, 473, 122 N.W. 286, 297 (1909).

See *Pugach v. Klein*, 193 F. Supp. 630 (S.D.N.Y. 1961); *Moog Indus., Inc. v. FTC*, 355 U.S. 411, 413 (1958). See also Hall, *Police Law in a Democratic Society*, 28 IND. L.J. 133, 149-50 (1953). (2) The guilty party may have valuable information as an informer that justifies, in the eyes of the police, not invoking the criminal process. See Donnelly, *Judicial Control of Informers, Spies, Stool Pigeons, and Agents Provocateurs*, 60 YALE L.J. 1091 (1951). (3) Racial factors may influence the exercise of discretion. See W. KEPHART, *RACIAL FACTORS AND URBAN LAW ENFORCEMENT* 66 (1957). (4) The victim may not want a prosecution of the suspect. Compare, e.g., *Taylor v. State*, 29 Okla. Crim. 160, 232 P. 963 (1925), with *State v. Astin*, 106 Wash. 336, 180 P. 394 (1919). (5) Other reasons include ambiguity in the law and inconsistency between the law, morality, and behavior. As to the latter, T. W. Arnold has written: "Most unenforced criminal laws survive in order to satisfy established modes of conduct. They are unenforced because we want to continue our conduct, and unrepented because we want to preserve our morals." T. ARNOLD, *THE SYMBOLS OF GOVERNMENT* 160 (1935).

<sup>32</sup> "It is no secret that Davis is an expansionist when it comes to judicial review so it is no surprise that he advocates that the doctrines of standing and ripeness be simplified . . ." Schulz, Jr., *supra* note 2 at 418.



Even if my suggested approach is fully accepted, most of the thinking has yet to be done.

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The need for more descriptive and critical studies of the realities about the administration of government programs seems to be urgent.

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*We need a new jurisprudence that will encompass all of justice, not just the easy half of it.*<sup>33</sup>

OVID C. LEWIS\*

OIL: THE BIGGEST BUSINESS. By Christopher Tugendhat. New York: G.P. Putnam's Sons. 1968. Pp. xviii, 318. \$6.95.

The famous arctic explorer Vilhjalmur Stefansson once said, "[I]f the average American or European university graduate had ten ideas about the Arctic, nine of them were wrong."<sup>1</sup> The same remark could, today, be made concerning the American public's understanding of the international oil industry. This leviathan of the business world affects most of us continuously, yet the industry's complexity militates against our comprehension of its operations. We recognize its products as an energy source, but general awareness is lacking concerning the importance of oil and gas as ingredients of a variety of chemical products ranging from pharmaceuticals to insecticides, from shower curtains to detergents. The very size of these industrial monsters means that their influence on governmental policies is substantial. Among all of the world's corporations, only three companies outside the oil industry, General Motors, U.S. Steel, and Unilever, can begin to compare in size to the "big seven."<sup>2</sup> These corporations are so large and powerful that even an analogy to that giant of classic corporate economics, the cartel, fails to adequately characterize their nature. The seven companies are powerful enough to deal with sovereign nations as equals, and with all but the largest states they are more than equal. In order to achieve a greater measure of equality in dealing with these giant corporations, several nations including Venezuela, Saudi Arabia, Iran, Kuwait, Iraq, Qatar, Libya, Indonesia, and Abu Dhabi have joined together as the Organization of Petroleum Exporting Coun-

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<sup>33</sup> K. DAVIS, *supra* note 3, at 232-33.

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tries (OPEC). In view of the above, the discipline of political science would perhaps be the best analytical framework within which to examine the behavior of these companies, for in most functions their behavior more closely resembles that of a sovereign state than that of a business enterprise.

Most oil companies both cooperate and compete fiercely with their competitors. Small firms are subject to the brutal tactics of an economic jungle, and yet many small firms exist and even prosper with the assistance of the giants. The foregoing portrait of the oil corporation as a political entity only partially explains why it is that oil operations are conducted in an environment characterized by such contradictions. Mr. Tugendhat feels that the desire to earn a profit, the only constant in the industry's behavior, provides the key to explaining individual corporations' seemingly schizophrenic actions. When combined with corporate reticence to provide information concerning their activities, this random behavior makes the industry fascinating but inscrutable. The author's reference to the tanker market as the biggest floating crap game in the world could appropriately be applied to the entire industry.<sup>3</sup>

The author's treatment of the oil corporations' activities has the effect of likening the industry to the small family farmer. The firms may be large, but, nevertheless, they must constantly face commercial annihilation from forces not subject to their control. The pursuit of profits leads them to tuck rapidly as they react to external pressures. It would be a repetition of the book to discuss all of the incongruous attributes of these companies, but two are worthy of mention. The largest single problem of the industry is overproduction which, because of the inelastic demand for petroleum, results in depressed prices. Every large company, however, expends substantial effort and money to find additional reserves even though more oil is not needed. Given the political instability of most of the present major producing regions, each company fears losing its source of supply. And even if the supply was assured, market proximity is of such economic importance that no "major" can allow a competitor to get between him and his market. For this and other reasons, a frenzied drive for new supplies persists while world prices continue to decline.

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<sup>1</sup> THE ARCTIC FRONTIER 3 (R. St. MacDonald ed. 1928).

<sup>2</sup> Standard Oil (New Jersey), Royal Dutch Shell, Mobil Oil, Texaco, Gulf Oil, Standard Oil (California), and British Petroleum.

<sup>3</sup> C. TUGENDHAT, OIL: THE BIGGEST BUSINESS 185 (1968).

A second interesting trait of these companies is their fierce resistance to governmental regulation in the presence of cutthroat competition. Only in the United States have they allowed governmental interference in the form of a variety of protective statutes to insulate their business from the rigors of competition. The resultant inefficiency in production, high costs of domestic consumption, and minimal taxation of the oil industry has been and is a national disgrace. Internationally, the operations of these same companies are highly competitive, and the taxes that these companies pay are the mainstay of the various producing nations' economies. The reason for the unhappy American experience is to be found in the historical development of the industry, and Mr. Tugendhat has performed a commendable job of compressing into one volume a comprehensive overview of the oil industry's development from Drake's first well to the extraction of oil from the Athabaskan tar sands of Alberta.

We cannot get away from the oil industry because in our multiple roles as consumers, citizens, and lawyers we are constantly touched by its activities. When one shares his habitat with a giant it behooves him to obtain knowledge of that giant's nature: Living with even a friendly elephant can be dangerous. Mr. Tugendhat's book provides a pleasant method of becoming acquainted with the physiology of one such colossus.

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